IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1519 OF 2004

Vimal Kishangopal Maheshwari ...Petitioner

V/s.

The State of Maharashtra & Anr. ...Respondents

Shri.P.M.Vyas with Shri.S.R. Singh for the Petitioner.
Ms. S.D. Shinde A.P.P. for the Respondents.

CORAM : A.S. OKA, J.
DATED : JUNE 14, 2005.

P.C.:

1. The Petitioner filed a complaint before the Metropolitan Magistrate in the year 1990. Process was issued under Sections 403 and 420 of the Indian Penal Code. On 3rd August, 1991 learned Metropolitan Magistate dismissed the complaint under Section 249 of the Code of Criminal Procedure, 1973 as the Petitioner and the Advocate representing the Petitioner were absent. On 23rd December, 1991, the Petitioner filed a fresh complaint in the same Court. On 11th September, 1992 the second complaint was dismissed by the learned Magistrate on the ground that the same was not maintainable. The order dated 11th September, 1992 was challenged by the Petitioner by filling Criminal Writ Petition No.87 of 1993. By Judgment and Order dated 3rd September, 1999, the said Writ Petition was dimissed. In the present Petiton, the challenge is to the Order dated 3rd August, 1991

passed by the learned Magistrate on the first complaint and the Order dated 11th September, 1992 passed by the learned Magistrate on the second complaint. The prayer clause ‘b’ is for review of the Judgment and Order dated 3rd September, 1999 passed by this Court in Criminal Writ Petition No.87 of 1993.

2. The learned Counsel appearing for the Petitioner submitted that as a result of the orders impugned in this Petition, the Petitioner has left with no other remedy. He submitted that there is no limitation for filing a complaint under Section 420 of the Indian Penal Code. He submitted that the Petitioner cannot suffer because of the wrong orders passed by the Court and because of the default on the part of the Advocate appearing on behalf of the Petitioner.

3. I have considered the submissions. After the first complaint was dismissed, the Petitioner filed the second complaint which was dismissed by the order dated 11th September, 1992. The order dated 11th September, 1992 was challenged by the Petitioner by filing Criminal Writ Petition No.87 of 1993. As the said Criminal Writ Petition has been dismissed on merits, the challenge to Order dated 11th September, 1992 in this Petition is misconceived and cannot be

considered on merits. The said Writ Petition No.87 of 1993 was rejected on 3rd September, 1999. The Judgment and Order of this Court shows that the Advocate for the Petitioner was absent. There is no statement made in this Petition as to when the petitioner became aware about the Order dated 3rd September, 1999. Thereis no reason stated as to what prevented the Petitioner from approaching this Court for challenging the Order dated 3rd August, 1991 for such a long time. The Petition was presented to this Court on 22nd July, 2004. In the Writ Petition there is absolutely no justification for delay. There is no averment that the Petitioner came to know about the dismissal of the above Petition on a particular date. Thus, Petition suffers from gross and unexplained delay and latches.The delay is totally unexplained. Therefore, this Petition cannot be entertained so far as prayer (a) is concerned.

4. Prayer for review of the Judgment and Order dated 3rd September, 1999 cannot be considered in this Petition under Section 482 of the Code of Criminal Procedure, 1973 and Article 227 of the Constitution of India. Apart from this fact there is no explanation for delay in making the prayer for review.

5. On the grounds which are stated above, the Petition is not entertained and the same is rejected.

JUDGE